REGULATORY REFORM/Cloture (3rd Attempt)

SUBJECT: **Comprehensive Regulatory Reform Act of 1995 . . . S. 343. Hatch motion to close debate.**

ACTION: CLOTURE MOTION REJECTED, 58-40

SYNOPSIS: As reported, S. 343 will make changes to reform the regulatory process.

The Dole/Johnston substitute amendment would modify the bill in accordance with suggestions made by Senate Democrats, the Administration, and the American Bar Association. The amendment would: recodify and modify the Administrative Procedures Act (APA); impose judicially reviewable obligations on Federal agencies to craft rules in which the benefits justify the costs and to use peer reviewed, standardized risk assessments; expand the Regulatory Flexibility Act; reform the Delaney Clause; and strengthen congressional oversight.

On July 17, 1995, Senator Hatch sent to the desk, for himself and others, a motion to close debate on the Dole/Johnston substitute amendment.

NOTE: The motion to invoke cloture requires a three-fifths majority (60) vote of the Senate to succeed. This vote was the third attempt to invoke cloture on the amendment (see vote Nos. 311 and 315).

Senator Pell was present, but chose to pair his vote with Senator Inouye, who was not. Pairing votes is a Senate custom that is not part of Senate rules. If a Senator knows that he or she will not be present for a vote, he or she may ask a Senator who is present who will vote the opposite way on a question to refrain from voting. The present Senator, as a matter of courtesy, may agree. The purpose of such pairing is to achieve the vote outcome that would occur if the absent Senator were present. For example, a 45-44 vote may occur without pairing, but if one of the absent Senators who opposes the question makes a live pair with one of the present Senators, the result will instead be 44-44. The effect of a 44-44 vote is the same as the effect of a 45-45 vote, which is the result that would occur in this example if the absent Senator were present. However, on this vote, the purpose of pairing is lost because a "no" vote on cloture is always meaningless--for cloture to be invoked, 60 votes in favor are needed. A vote of 60-40, 60-20, or 60-0 would all have the same effect. If an absent Senator wishes to be recorded in opposition, he or she may simply send notice of his or her opposition. That Senator will then be listed as "absent, announced nay." Thus, pairing on a cloture vote does not extend any courtesy

(See other side)

YEAS (58)

Republicans (54 or 100%)		Democrats (4 or 9%)
Abraham	Hutchison	Breaux
Ashcroft	Inhofe	Heflin
Bennett	Jeffords	Johnston
Bond	Kassebaum	Nunn
Brown	Kempthorne	
Burns	Kyl	
Campbell	Lott	
Chafee	Lugar	
Coats	Mack	
Cochran	McCain	
Cohen	McConnell	
Coverdell	Murkowski	
Craig	Nickles	
D'Amato	Packwood	
DeWine	Pressler	
Dole	Roth	
Domenici	Santorum	
Faircloth	Shelby	
Frist	Simpson	
Gorton	Smith	
Gramm	Snowe	
Grams	Specter	
Grassley	Stevens	
Gregg	Thomas	
Hatch	Thompson	
Hatfield	Thurmond	
Helms	Warner	

NAYS (40)

Republicans (0 or 0%)	Democrats (40 or 91%)	
	Akaka	Hollings
	Baucus	Kennedy
	Biden	Kerrey
	Bingaman	Kerry
	Boxer	Kohl
	Bradley	Lautenberg
	Bryan	Leahy
	Bumpers	Levin
	Byrd	Lieberman
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Exon	Pryor
	Feingold	Reid
	Feinstein	Robb
	Ford	Rockefeller
	Glenn	Sarbanes
	Graham	Simon
	Harkin	Wellstone

NOT VOTING (1)

Republicans (0)	Democrats (1)
	Inouye-[2PN]

LIVE PAIRS(1):

PRESENT AND GIVING:	RECEIVING:
Pell (PY)	Inouye (PN)

EXPLANATION OF ABSENCE:

1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

to the absent Senator, though it is still a refusal to vote.

Those favoring the motion to invoke cloture contended:

Argument 1:

We have reached the end of the line. Over the past two days we have had intense negotiations with opponents of this bill and have agreed to numerous modifications. However, three issues remain with some of our colleagues that are not negotiable. First, our colleagues want us to adopt their language that will make it impossible to review existing rules. Under their language, review will be at the sole discretion of an agency. Any agency that wanted to right now could review any of its reviews--their language is therefore useless window dressing that would let Senators pretend to enact reform when they were really doing nothing. The only new requirement would be that an agency would have to make a review list. It could list 100, 5, 0, or any number of rules. It could be challenged for not making a list, but it could not be challenged for not listing any rules. Second, they have continued to demand that we drop the use of cost-benefit analyses and risk assessments as decisional criteria. They want these analyses to be done, but they do not want agencies to base their decisions on them. The analyses would have no more legal weight than a letter from a concerned citizen if our colleagues had their way. Third, once analyses have been done, our colleagues want it to be impossible for anyone to use them to challenge in court whether rules are arbitrary and capricious. The latest language they have asked us to adopt is "The adequacy of compliance or the failure to comply shall not be grounds for remanding or invalidating a final agency action." If we were to accede to these three demands this bill would be worthless. Our colleagues would change this bill from one which could be used to force agencies to review existing rules to one which would let them, at their discretion, review existing rules (which they can already do) and it would require them to perform analyses which they could ignore and which no one could challenge them for ignoring. Every President since President Ford has required that rules be reviewed, and every President since President Ford has been ignored by agencies which were safe from judicial review. Our colleagues do not want a real reform bill--they want a pretend reform bill that leaves the current broken-down system intact. We will not participate in a charade just so we can declare victory. No further compromises are possible. Senators can accept the Dole/Johnston amendment as it has been watered down, or they can be responsible for killing the bill.

Argument 2:

While this bill is far from perfect we concede that our colleagues have made numerous substantive improvements to it at our behest. The language which we thought resulted in a supermandate has been substantially modified, the petition process has been narrowed, the scope of judicial review has been reduced, and the threshold has been raised to $100 million. In addition to these and other changes that have been made, our colleagues have negotiated with us on a package of amendments which they have agreed to support during post-cloture debate. Their willingness to compromise is commendable, and has resulted in a bill that we may ultimately be able to vote to pass. We will reserve our final judgment for now, because we do not yet know how this bill may be amended in post-cloture debate, but at this time we are pleased to vote to invoke cloture.

Those opposing the motion to invoke cloture contended:

Since the last cloture vote great progress has been made in negotiations to fix the Dole/Johnston substitute amendment. For instance, Senators have agreed to change the requirement for agencies to pick the "least cost" alternative to a requirement that they pick the alternative with the "greatest net benefits." They have also agreed to modify part of their judicial review language, including by getting rid of "interlocutory review." Another significant change is that they have said that they are now willing to discuss changes to the Toxic Release Inventory. We have a ways to go, but we are making good progress. Having a cloture vote now is counterproductive. We urge Senators to vote against cloture and continue negotiating.